

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:HMT:CLE:POSTF-150330-01  
RSBloom

date: August 13, 2002

to: LMSB:NR: [REDACTED]  
[REDACTED]

Attn: Daniel Callahan & Joseph Solarz

from: Associate Area Counsel, CC:LM:HMT:CLE

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subject: [REDACTED] Partnership  
Form 870-P Partial Agreement Language

As was stated in our memorandum of July 15, 2002, regarding this matter, our advice contained therein was subject to 10-day post review by our National Office. Please be advised that this review has now been completed. The National Office is in agreement with our advice. However, it was noted that, on page 12 where we discussed the law regarding the partner [REDACTED], Inc., we erroneously made reference to current I.R.C. § 706(c)(2)(A). In [REDACTED], the relevant year being discussed, former section 706(c)(2)(A)(i) provided that the taxable year of a partnership shall close with respect to a partner who sells or exchanges his entire interest in the partnership. Nevertheless, the law was unclear in [REDACTED] as to whether the merger of a corporate partner into another corporation resulted in a sale or exchange of the partnership interest. Therefore, our advice remains unchanged.

If you have any questions regarding the above, please feel free to contact the undersigned at 216-522-3380 (ext. [REDACTED]).

JOSEPH F. MASELLI  
Area Counsel  
(Heavy Manufacturing and  
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By: \_\_\_\_\_  
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(Large and Mid-Size Business)

Office of Chief Counsel  
Internal Revenue Service

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CC:LM:HMT:CLE:POSTF-150330-01  
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date: July 15, 2002

to: LMSB:NR: [REDACTED]

Attn: Daniel Callahan & Joseph Solarz

from: Associate Area Counsel, LM:HMT:CLE

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subject: [REDACTED] **Partnership**  
**Form 870-P Partial Agreement Language**

This memorandum responds to your various requests for advice regarding the format to use when preparing Form 870-P Partial Agreements for the partners in the above referenced partnership. Proposed language for the specific corporate partners' forms is also being provided. Our recommendations are conditioned upon the accuracy of the facts as provided by you and stated below. This memorandum should not be cited as precedent. The advice contained herein is subject to 10-day post review by our National Office and, therefore, is subject to modification.

**ISSUES**

- 1) What additional language, if any, must be added to a Form 870-P in order to make it a partial agreement.
- 2) When the partner is a subsidiary corporation that filed consolidated income tax returns with its common parent, what name, EIN and address should appear on the Form 870-P as taxpayer.
- 3) When the partner is a subsidiary corporation that filed consolidated income tax returns with its common parent, who must sign the Form 870-P.

**CONCLUSIONS**

- 1) For a partial agreement, the Form 870-P as well as the Schedule of Adjustments must contain the annotation **Partial Agreement** on all pages, with the following statement added: **This partial agreement becomes effective upon execution by the**

Commissioner of Internal Revenue or his delegate. It does not settle all of the partnership items, and the partner is still party to the unified proceedings for all issues not identified in this agreement. The period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.

2) The name, EIN and address of the common parent should appear as the taxpayer on the Form 870-P. However, for purposes of clarification, an asterisk (\*) should follow the name. Following the asterisk at the bottom of the form, reference should be made to the partner subsidiary. See below for recommended language for the various partners.

3) The Form 870-P must be signed with the common parent's name, followed by the signature and title of the corporate officer currently authorized to sign for the common parent.

#### FACTS

[REDACTED] Partnership (" [REDACTED] ") owns and operates [REDACTED] and [REDACTED] leases in the [REDACTED] field in the [REDACTED]. Its partners include many of the [REDACTED] and [REDACTED] companies. In addition, numerous "[REDACTED]" partnerships ([REDACTED] such partnerships with approximately [REDACTED] partners in total) were partners in [REDACTED] during the years [REDACTED] and [REDACTED]. Representatives of [REDACTED]'s tax matters partner have indicated that they have been in contact with the [REDACTED] partners, other than the [REDACTED] partners ([REDACTED]), and, with respect to the years [REDACTED] through [REDACTED], the partners are in agreement with all examination issues except the disallowance of the additional [REDACTED] claimed on Forms 8082. Therefore, the partners are interested in entering into Forms 870-P resolving these partnership items.

Partners: [REDACTED] Company & [REDACTED] Inc.

[REDACTED] Company (EIN: [REDACTED]) was a subsidiary of The [REDACTED] Company (EIN: [REDACTED]) and filed a consolidated income tax return, with [REDACTED] as common parent. In February [REDACTED], [REDACTED] changed its name to [REDACTED] Company.<sup>1</sup> In [REDACTED]

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<sup>1</sup>On the Schedule K-1 for the [REDACTED] year, the partner is still reported as [REDACTED] Company.

[REDACTED], [REDACTED] Company changed its name to [REDACTED] ([REDACTED]) Inc.<sup>2</sup>

[REDACTED] Inc. (EIN: [REDACTED]) was a subsidiary of [REDACTED] Inc. (EIN: [REDACTED]) and filed a consolidated income tax return, with [REDACTED] as common parent. In [REDACTED], [REDACTED] merged into [REDACTED] Company, with [REDACTED] Company surviving.<sup>3</sup>

On [REDACTED], [REDACTED], [REDACTED] Inc. changed its name to [REDACTED] Inc. On [REDACTED], [REDACTED], [REDACTED] Inc. acquired The [REDACTED] Company in a reverse acquisition. Thus, [REDACTED] Inc. became the common parent of The [REDACTED] Company group. The [REDACTED] Company is in still existence today as a separate corporate subsidiary of [REDACTED].

Partner: [REDACTED] **Company**

[REDACTED] Company (EIN: [REDACTED]) was a wholly-owned subsidiary of [REDACTED] Corporation (EIN: [REDACTED]). In [REDACTED], [REDACTED] Corporation ("Old [REDACTED]") formed [REDACTED], Inc., as a wholly-owned subsidiary. Also, [REDACTED] LLC ("[REDACTED] LLC") was formed with [REDACTED], Inc., as its sole member. On [REDACTED], Old [REDACTED] contributed the stock of [REDACTED] Company to [REDACTED]. On the same date, Old [REDACTED] was merged into [REDACTED] LLC and the outstanding stock of Old [REDACTED] was converted into the stock of [REDACTED], Inc. The name [REDACTED], Inc., was then changed to [REDACTED] Corporation ("New [REDACTED]"). As a result of this internal restructuring, New [REDACTED] held the entire ownership interest in [REDACTED] LLC and all of the stock of [REDACTED] Company. New [REDACTED] continued to use the historical EIN of Old [REDACTED]. In addition, [REDACTED] LLC, being solely owned by New [REDACTED], was a disregarded entity and treated as a division of New [REDACTED] for Federal income tax purposes. Effective [REDACTED], [REDACTED] LLC was converted into a corporation named [REDACTED] Corporation. New [REDACTED] then spun off [REDACTED] Corporation in a tax-free transaction under I.R.C. § 355 to holders of [REDACTED] group common stock. Contemporaneously, New [REDACTED] changed its name to [REDACTED] Corporation.

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<sup>2</sup>Although [REDACTED] Company's name was not changed until [REDACTED], The Schedule K-1 for [REDACTED] reports the partner as [REDACTED] ([REDACTED]) Inc., EIN: [REDACTED].

<sup>3</sup>There was no separate Schedule K-1 for [REDACTED], Inc., for the [REDACTED] year. The only relevant Schedule K-1 for the year was in the name of [REDACTED] ([REDACTED]) Inc.

Partner: [REDACTED] **Corporation**  
[REDACTED] Corporation (EIN: [REDACTED]) filed its Federal income tax returns under its name.<sup>4</sup>

Partner: [REDACTED], **Inc.**  
[REDACTED], Inc., (EIN: [REDACTED]) was a subsidiary of [REDACTED] Company (EIN: [REDACTED]) and filed a consolidated income tax return, with [REDACTED] Company as common parent.<sup>5</sup> In [REDACTED], [REDACTED], Inc., changed its name to [REDACTED], Inc.

Partner: [REDACTED], **Inc.**  
[REDACTED], Inc., (EIN: [REDACTED]) was a subsidiary of [REDACTED] (EIN: [REDACTED]) and filed a consolidated income tax return, with [REDACTED] as common parent. In [REDACTED], [REDACTED] changed its name to [REDACTED] Corporation. In [REDACTED], [REDACTED] Corporation changed its name to [REDACTED] Corporation. In [REDACTED], [REDACTED], Inc., merged into [REDACTED] Company, with [REDACTED] surviving and changing its name to [REDACTED], Inc., (EIN: [REDACTED]).

Partner: [REDACTED] **Corporation**  
[REDACTED] Corporation (EIN: [REDACTED]) filed its Federal income tax returns under its name.<sup>6</sup> In [REDACTED], it changed its name to [REDACTED]. In [REDACTED], its name was changed to [REDACTED] Corporation.

Partners: [REDACTED] **Company &**  
[REDACTED], **Inc.**  
[REDACTED] Company (EIN: [REDACTED]) filed its Federal income tax returns under its name.<sup>7</sup> Sometime during [REDACTED], [REDACTED], Inc.,

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<sup>4</sup>The returns were either consolidated with the partner corporation as common parent or the partner corporation's separate corporate returns.

<sup>5</sup>The information provided by the TMP indicates that [REDACTED] Company has the same current address as [REDACTED]; therefore, **you should verify that [REDACTED] Company still exists as a separate corporation.** If it does not currently exist as a separate corporation, the following advice should not be followed with respect to this partner and you should contact our office for further guidance.

<sup>6</sup>See footnote 4, above.

<sup>7</sup>See footnote 4, above.

(EIN: [REDACTED])<sup>8</sup> acquired [REDACTED] Company, and in [REDACTED] [REDACTED]'s [REDACTED] interest was transferred to [REDACTED], Inc., (EIN: [REDACTED]). In [REDACTED], the name [REDACTED] Company was changed to [REDACTED] Company.

[REDACTED], (EIN: [REDACTED]) was a subsidiary of [REDACTED], Inc. (EIN: [REDACTED]) and filed a consolidated income tax return, with [REDACTED], Inc., as common parent. In [REDACTED], [REDACTED], Inc., changed its name to [REDACTED] Company.

Partner: **The [REDACTED] Company**  
The [REDACTED] Company (EIN: [REDACTED]) filed its Federal income tax returns under its name.<sup>9</sup>

Partner: **[REDACTED] Corporation**  
[REDACTED] Corporation (EIN: [REDACTED]) filed a consolidated income tax return, with [REDACTED] Corporation (EIN: [REDACTED]) as common parent.<sup>10</sup>

Partner: **[REDACTED] Company**  
[REDACTED] Company (EIN: [REDACTED]) filed its Federal income tax returns under its name.<sup>11</sup>

Partner: **[REDACTED], Inc.**  
[REDACTED], Inc., (EIN: [REDACTED]) was a subsidiary of [REDACTED], (EIN: [REDACTED]) and filed consolidated income tax returns, with [REDACTED], Inc., as

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<sup>8</sup>The information provided by the TMP indicates that [REDACTED], Inc., has the same current address as [REDACTED]; therefore, **you should verify that [REDACTED], Inc., still exists as a separate corporation.** If it does not currently exist as a separate corporation, the following advice should not be followed with respect to this partner and you should contact our office for further guidance.

<sup>9</sup>See footnote 4, above.

<sup>10</sup>The information provided by the TMP indicates that [REDACTED] Corporation has the same current address as [REDACTED]; therefore, **you should verify that [REDACTED] Corporation still exists as a separate corporation.** If it does not currently exist as a separate corporation, the following advice should not be followed with respect to this partner and you should contact our office for further guidance.

<sup>11</sup>See footnote 4, above.

common parent.

### LAW and ANALYSIS

1) A settlement between the Service and 1 or more partners in a partnership with respect to the determination of partnership items for any partnership taxable year shall (except as otherwise provided in such agreement) be binding on all parties to such agreement with respect to the determination of partnership items for such partnership taxable year. I.R.C. § 6224(c)(1). Form 870-P, Agreement to Assessment and Collection of Deficiency in Tax for Partnership Adjustments, is the form used to reflect such a settlement. As indicated in the above parenthetical, a settlement is binding with respect to the determination of partnership items for the partnership taxable year **except as otherwise provided in such agreement**. In other words, a settlement does not have to settle all partnership items of a partnership for the taxable year; the parties can enter into a partial settlement.

The partnership items of a partner for a partnership taxable year become nonpartnership items as of the date the Service enters into a settlement agreement with the partner with respect to such items. I.R.C. § 6231(b)(1)(C). Therefore, once a partner settles partnership items for a partnership taxable year, he no longer has an interest in any partnership matter relating to such partnership items for that partnership taxable year. Under section 6226(d)(1), a partner that settles partnership items with respect to a partnership taxable year cannot be a party to any judicial review of a notice of final partnership administrative adjustment relating to the settled partnership items. He also cannot file a readjustment petition with respect to such a notice regarding settled partnership items. I.R.C. § 6226(d)(2). Likewise, he cannot be a party to any judicial review of the disallowance in whole or in part of an administrative adjustment request relating to settled partnership items. I.R.C. § 6228(a)(4)(B). Thus, if a partner settles partnership items for a partnership taxable year, he cannot participate in any judicial review regarding such matters. Also, once items become nonpartnership items due to a comprehensive settlement, a 1-year statute of limitations for assessment with respect to the settling partner is triggered. I.R.C. § 6229(f)(1). However, this 1-year statute of limitations is not triggered when there has only been a partial settlement of partnership items. I.R.C. § 6229(f)(2).

Due to the above-mentioned differing consequences,<sup>12</sup> which are dependant upon whether a settlement is comprehensive or partial, it is imperative that any Form 870-P used to settle only a portion of a partner's partnership items for any partnership taxable year be clearly identified as a **Partial Agreement**. The Form 870-P as well as the Schedule of Adjustments must contain the annotation **Partial Agreement** on all pages, with the following statement added:

**This partial agreement becomes effective upon execution by the Commissioner of Internal Revenue or his delegate. It does not settle all of the partnership items, and the partner is still party to the unified proceedings for all issues not identified in this agreement. The period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.**

2) & 3) I.R.C. § 6224(b)(1) provides that a partner may waive any right that the partner has or any restriction on action by the Service. This waiver must be made by a signed notice in writing filed with the Service. I.R.C. § 6224(b)(2). If the Service furnishes a form to be used for such waiver, it may be used by the partner in accordance with its accompanying instructions. Treas. Reg. § 301.6224(b)-1T(b). Form 870-P has been furnished by the Service for settling partnership items and waiving restrictions on assessment relating to settled items. The form specifically requests the taxpayer's name, address, zip code,

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<sup>12</sup>There is also an argument that, for the years in issue, the right to request consistent settlement terms only applies when there has been a comprehensive settlement agreement entered into by a partner. Treas. Reg. § 301.6224(c)-3(a), which specifically states that the right to request a consistent settlement applies whether the settlement is comprehensive or partial, is only applicable to years beginning on or after October 4, 2001. Treas. Reg. § 301.6224(c)-3(e). Therefore, the years in issue are not covered by the final regulations. Temp. Treas. Reg. § 301.6224(c)-3T(b), effective for the years in issue, initially provided that consistent settlement terms were only required to be provided upon request when a comprehensive agreement had been entered into by a partner. T.D. 8128, 1987-1 C.B. 325. This temporary regulation was amended, effective January 26, 1999, to include partial agreements as well as comprehensive agreements. T.D. 8808, 1999-1 C.B. 682. However, these temporary regulations have expired; temporary regulations expire within 3 years after the date of their issuance. I.R.C. § 7805(e)(2).



identifying number and signature.

The term "partner" means a partner in the partnership, and any other person whose tax liability is determined in whole or in part by taking into account directly or indirectly partnership items of the partnership. I.R.C. § 6231(a)(2). Thus, in addition to the actual investing partner which was a subsidiary corporation that filed a consolidated Federal income tax return with its common parent, its common parent and all subsidiaries included in the return are partners under the Code.

I.R.C. § 1501 grants an affiliated group of corporations the privilege of filing a return on a consolidated basis. If a consolidated return is filed, the members of the group consent to be bound by the legislative regulations promulgated pursuant to the authority in I.R.C. § 1502.

Under Treas. Reg. § 1.1502-77(a), the common parent of the consolidated group is the sole agent for each subsidiary in the group and duly authorized to act in its own name in all matters relating to the consolidated tax liability of the group. The common parent in its name will give waivers, bonds and execute closing agreements and all other documents, and any document so given or executed will be considered as having also been given or executed by each subsidiary.

Treas. Reg. § 1.1502-77(a) further provides that the common parent remains the agent for the members of the group for any years during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. Thus, where the common parent remains in existence, even if it is no longer the common parent, it remains the agent for the group with regard to years in which it was the common parent of the group. However, once the common parent's corporate existence terminates, its capacity as agent for its old consolidated group terminates as well. See, Southern Pacific Co. v. Commissioner, 84 T.C. 395, 401 (1985).

Treas. Reg. § 1.1502-75(d)(2)(i) provides that "the common parent corporation shall remain as the common parent irrespective of a mere change in identity, form, or place of organization of such common parent corporation."

Partners: [REDACTED] Corporation  
The [REDACTED] Company  
[REDACTED] Company  
[REDACTED] ( [REDACTED] )

First, we recommend that you determine whether these

corporations filed a consolidated income tax return for any of the years in issue. If not (they filed their own separate corporate income tax returns for the years in issue), their partial Forms 870-P should merely reflect as taxpayer their names, EINs and addresses. However, if they filed consolidated income tax returns with them as common parent of their consolidated group, the form should reflect such fact in the name of the taxpayer by adding after their names "and Subsidiaries" (e.g., [REDACTED] Corporation and Subsidiaries). For the years [REDACTED] through [REDACTED] of the partner [REDACTED] Corporation, the taxpayer should be identified as [REDACTED] Corporation, formerly [REDACTED], formerly [REDACTED] Corporation (and Subsidiaries).<sup>13</sup> For the years [REDACTED] through [REDACTED] of the partner [REDACTED] Corporation, the taxpayer should be identified as [REDACTED] Corporation, formerly [REDACTED] (and Subsidiaries).<sup>14</sup>

Partners: [REDACTED] Corporation  
[REDACTED], Inc.  
[REDACTED], Inc.

The partial Forms 870-P should reflect the common parent's name, EIN and address. There should be an asterisk (\*) following the common parent's name for clarification purposes (e.g., [REDACTED] Corporation and Subsidiaries\*). Following the asterisk, at the bottom of the form, reference should be made to the partner subsidiary (e.g., [REDACTED] Corporation filed a consolidated income tax return for its consolidated group, of which [REDACTED] Corporation (EIN: [REDACTED]) was a member). For the partner [REDACTED], Inc., its name change to [REDACTED], Inc., in year [REDACTED] need not be reflected on the forms 870-P, because it took place after the years in issue.

Partner: [REDACTED] Company

The partial Form 870-P should reflect its common parent's name, EIN and address. [REDACTED] Company's common parent, Old [REDACTED], ceased to exist when it merged into [REDACTED] LLC. Under Treas. Reg. § 1.1502-75(d)(2)(ii), in the case of a downstream merger, like that involving Old [REDACTED] and [REDACTED] LLC, the group is considered to remain in existence, notwithstanding that its common parent no longer exists, with its new common parent being the highest-tier, includible corporation which was a member of the group prior to the date the former common parent ceased to exist. See, Rev. Rul. 82-152, 1982-2 C.B. 205. Thus, the [REDACTED] group remained in

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<sup>13</sup>The parenthetical should be added if the partner filed a consolidated income tax return for the relevant years.

<sup>14</sup>See footnote 13, above.

existence following the merger of Old [REDACTED] into [REDACTED] LLC, and New [REDACTED] (as [REDACTED] was renamed) became the new common parent for the group. New [REDACTED] was the highest-tier, includible corporation in the remaining [REDACTED] chain. It was also a member of the group prior to Old [REDACTED] merging into [REDACTED] LLC, being formed in [REDACTED], [REDACTED] months before the merger. As the new common parent, New [REDACTED] was authorized to act as agent for the continuing [REDACTED] group with respect to both pre- and post-merger consolidated years. See, Southern Pacific v. Commissioner, *supra*. New [REDACTED] was later renamed [REDACTED] Corporation contemporaneous with the spinoff of [REDACTED] Corporation. Neither the renaming of New [REDACTED] nor the spinoff of [REDACTED] affects [REDACTED] Corporation's status as the common parent and agent for the continuing [REDACTED] group. Therefore, the taxpayer's name, EIN and address on the form should reflect that of [REDACTED] Corporation. For clarification purposes, we suggest the name appear as follows: [REDACTED] Corporation, formerly [REDACTED] Corporation, formerly [REDACTED], Inc., formerly [REDACTED] Corporation and Subsidiaries \*. Following the asterisk at the bottom of the form, reference should be made to the partner as follows: \* [REDACTED] Corporation filed a consolidated income tax return for its consolidated group, of which [REDACTED] Company (EIN: [REDACTED]) was a member.

Partner: [REDACTED] Company

The partial Form 870-P should reflect its common parent's name, EIN and address. For the years [REDACTED] through [REDACTED], the taxpayer should be identified as The [REDACTED] Company and Subsidiaries \*. Following the asterisk, at the bottom of the form, reference should be made to the partner for the years [REDACTED] through [REDACTED] as follows: The [REDACTED] Company filed a consolidated income tax return for its consolidated group, of which [REDACTED] Company (EIN: [REDACTED]) was a member. For the year [REDACTED], following the asterisk should be reference to the partner as follows: The [REDACTED] Company filed a consolidated income tax return for its consolidated group, of which [REDACTED] Company (EIN: [REDACTED]), formerly [REDACTED] Company, was a member.<sup>15</sup> In [REDACTED], [REDACTED], Inc., acquired The [REDACTED] Company in a reverse acquisition. Under Treas. Reg. § 1.1502-75(d)(3)(i), The [REDACTED] Company group continues to exist with [REDACTED], Inc., as its common parent. Therefore, for the years [REDACTED] through [REDACTED], the taxpayer should be identified as [REDACTED], Inc. and Subsidiaries \*. Following the asterisk, at the bottom of the form, reference should be made to

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<sup>15</sup>See footnote 1, above.

the partners for the year [REDACTED] as follows: [REDACTED], Inc., filed a consolidated income tax return for its consolidated group, of which [REDACTED] Company (EIN: [REDACTED]) and [REDACTED], Inc., (EIN: [REDACTED])<sup>16</sup> were members. Following the asterisk for the year [REDACTED], reference to the partners should be as follows: [REDACTED], Inc., filed a consolidated income tax return for its consolidated group, of which [REDACTED] (EIN: [REDACTED]) Inc., formerly [REDACTED] Company (EIN: [REDACTED])<sup>17</sup> and [REDACTED] Inc. (EIN: [REDACTED]) were members.<sup>18</sup> Following the asterisk for the years [REDACTED] and [REDACTED], reference to the partner should be as follows: [REDACTED], Inc., filed a consolidated income tax return for its consolidated group, of which [REDACTED] (EIN: [REDACTED]) Inc. (EIN: [REDACTED]) was a member.

Partner: [REDACTED] Inc.

The partial Form 870-P should reflect its common parent's name, EIN and address. For the years [REDACTED] through [REDACTED], the taxpayer should be identified as [REDACTED], Inc., formerly, [REDACTED], Inc., and Subsidiaries \*. Following the asterisk at the bottom of the form, reference should be made to the partner as follows: [REDACTED], Inc., filed a consolidated income tax return for its consolidated group, of which [REDACTED], Inc. (EIN: [REDACTED]) was a member. For the short taxable year ended June [REDACTED],<sup>19</sup> the taxpayer should be identified as [REDACTED], Inc. and Subsidiaries \*. Following the asterisk, reference to the partner should be as follows: [REDACTED], Inc., filed a consolidated income tax return for its consolidated group, of which [REDACTED], Inc., (EIN: [REDACTED])

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<sup>16</sup>Due to [REDACTED]'s reverse acquisition of The [REDACTED] Company in [REDACTED], [REDACTED]'s [REDACTED] calendar year consolidated return includes the income of [REDACTED] Company for the full year and the income of [REDACTED], Inc., for the period [REDACTED] through [REDACTED]. For the year [REDACTED], the consolidate return includes the income from [REDACTED] Company for the full year and [REDACTED], Inc., for a portion of [REDACTED] (prior to the merger)..

<sup>17</sup>See footnote 2, above.

<sup>18</sup>See footnote 3, above.

<sup>19</sup>As a result of [REDACTED]'s reverse acquisition of The [REDACTED] Company, [REDACTED]'s consolidate group terminated; whereas, The [REDACTED] Company's consolidate group continued.

was a member. See the above discussion regarding [REDACTED] Company for the suggested language to be used for the short taxable year [REDACTED] through [REDACTED] for [REDACTED], Inc. In [REDACTED], [REDACTED] merged into [REDACTED] Company, with [REDACTED] Company surviving. As a general rule, under I.R.C. § 706(a), a partner's taxable income for a taxable year with respect to a partnership is based upon the income, gain, loss, deduction and credit of the partnership for the taxable year of the partnership ending within or with the taxable year of the partner. However, the taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates, whether by reason of death, liquidation, sale, exchange, or otherwise. I.R.C. § 706(c)(2)(A)<sup>20</sup>. A corporate partner that merges into another corporation transfers its assets (including its entire partnership interest) to the surviving corporation; thus, the taxable year of the partnership closes with respect to the merged corporate partner on the date of the merger. Since both partners were part of the same consolidated return, no allocation between the two is necessary for purposes of the partial Form 870-P. See the above discussion regarding [REDACTED] Company for the suggested language for the year [REDACTED].

Partner: [REDACTED], Inc.

The partial Form 870-P should reflect its common parent's name, EIN and address. For the year [REDACTED], the taxpayer should be identified as [REDACTED] Corporation, formerly [REDACTED] Corporation, formerly [REDACTED] and Subsidiaries \*. Following the asterisk, at the bottom of the [REDACTED] form, reference to the partner should be made as follows: [REDACTED] filed a consolidated income tax return for its consolidated group, of which [REDACTED] Inc., (EIN: [REDACTED]) was a member. For the years [REDACTED] and [REDACTED], the taxpayer should be identified as [REDACTED] Corporation, formerly [REDACTED] Corporation and Subsidiaries \*. For the years [REDACTED] and [REDACTED], reference to the partner after the asterisk should be as follows: [REDACTED] Corporation filed a consolidated income tax return for its consolidated group, of which [REDACTED], Inc., (EIN: [REDACTED])

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<sup>20</sup>The taxable year of the partnership also closes with respect to all partners in case of termination of the partnership under I.R.C. § 708. Since the business of the partnership continued throughout the years in issue and there was no sale or exchange of 50 percent or more of the total partnership capital and profits within a 12-month period, there was no termination of the partnership. See, I.R.C. § 708(b)(1).

██████████) was a member. In ██████████, Inc. merged into ██████████ Company, with ██████████ surviving and changing its name to ██████████, Inc. Under the facts as presented, ██████████ Company as well as ██████████, Inc., were part of the ██████████ Corporation's consolidated group at the time of the merger. If this fact is correct, then, as with the above-described merger, no allocation is necessary. In such case, the taxpayer should be identified for the year ██████████ as ██████████ Corporation, formerly ██████████ Corporation and Subsidiaries \*. Following the asterisk, reference to the partners should be as follows: ██████████ Corporation filed a consolidated income tax return for its consolidated group, of which ██████████, Inc., (EIN: ██████████) and ██████████ Company, nka ██████████, Inc., (EIN: ██████████) were members.<sup>21</sup> For the years ██████████ through ██████████, the taxpayer should be identified as ██████████ Corporation, formerly ██████████ Corporation and Subsidiaries \*. Following the asterisk, at the bottom of the form, reference to the partner should be as follows: ██████████ Corporation filed a consolidated income tax return for its consolidated group, of which ██████████, Inc., (EIN: ██████████) was a member.

Partner: ██████████ Company

First, we recommend that you determine whether it filed a consolidated income tax return. If not (it filed its own separate corporate income tax return), then for the year ██████████ its partial Form 870-P should reflect as the taxpayer ██████████ Company, formerly ██████████ Company, and its EIN and address. However, if it filed, as common parent, a consolidated income tax return with a consolidated group, the form should reflect such fact as follows: ██████████ Company, formerly ██████████ Company and Subsidiaries. Since ██████████, Inc., acquired ██████████ Company in ██████████, it is possible two partial Forms 870-P will be needed for the year. You must determine whether ██████████ Company on its short ██████████ taxable year (year ending with its acquisition by ██████████, Inc.) reported any portion of its distributive share of ██████████'s income. The law was unclear in ██████████ as to whether the partnership's income had to be allocated between ██████████'s separate short taxable year and ██████████'s consolidated return pursuant to the consolidated return

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<sup>21</sup>We strongly suggest that you verify the facts regarding this merger. It must be determined whether ██████████ Company was part of the ██████████ Corporation consolidated group at the time of the merger. If not, the details of the merger must be known (e.g., reverse acquisition [██████████ survived the merger, but became part of the ██████████ Corporation group]).

regulations.<sup>22</sup> Since [REDACTED]'s partnership year did not end until after [REDACTED] became a member of [REDACTED]'s consolidated group, under I.R.C. § 706 it is arguable that [REDACTED]'s distributive share of [REDACTED]'s income for the entire partnership year would be reportable on the [REDACTED], Inc., consolidated return. However, the Service, on a number of occasions, had taken the position that an allocation of the partnership income had to be made between the two corporate returns. See, Gen. Couns. Mem. 39292 (Apr. 30, 1984); Tech. Adv. Mem. 8442001 (May 14, 1984). If [REDACTED]'s distributive share of [REDACTED]'s [REDACTED] income was all reported on the [REDACTED]'s consolidated income tax return, only one Form 870-P is needed for the [REDACTED] year, and it should reflect the taxpayer as [REDACTED], Inc., and Subsidiaries \*. Following the asterisk, at the bottom of the form, the partner should be referenced as follows: [REDACTED], Inc., filed a consolidated income tax return for its consolidated group, of which [REDACTED] Company (EIN: [REDACTED]) was a member. In [REDACTED], [REDACTED] transferred its [REDACTED] interest to [REDACTED] Inc., another subsidiary of [REDACTED], Inc. Since both [REDACTED] and [REDACTED] Inc. filed a consolidated return with [REDACTED], Inc., as common parent, no allocation is necessary between the two corporate partners. The [REDACTED] through [REDACTED] Form 870-Ps should reflect the taxpayer as [REDACTED], Inc., and Subsidiaries \*. Following the asterisk for the year [REDACTED], reference to the partner should be as follows: [REDACTED], Inc., filed a consolidated income tax return for its consolidated group, of which [REDACTED], Inc. (EIN: [REDACTED]) and [REDACTED] Company, formerly [REDACTED] Company (EIN: [REDACTED]) were members. For the years [REDACTED] through [REDACTED], reference to the partner should be as follows: [REDACTED], Inc., filed a consolidated income tax return for its consolidated group, of which [REDACTED], Inc., (EIN: [REDACTED]) was a member. For the year [REDACTED], reference to the partner following the asterisk should be as follows: [REDACTED], Inc., filed a consolidated income tax return for its consolidated group, of which [REDACTED] Company, formerly [REDACTED], Inc., (EIN: [REDACTED]) was a member.

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<sup>22</sup>For corporations becoming or ceasing to be members of consolidated groups on or after January 1, 1995, the position is clear under the regulations. Treas. Reg. § 1.1502-76(b)(6). Under Treas. Reg. §§ 1.1502-76(b)(2)(vi)(A) and 1.1502-76(b)(5) Example 6, which are not applicable to the year in issue, [REDACTED] would have been treated for purposes of determining the allocation of partnership income between its separate return and the consolidated return of [REDACTED], Inc., as selling or exchanging its entire partnership interest.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views. Also, if you have any questions regarding the above, please feel free to contact the undersigned at 216-522-3380 (ext. [REDACTED]).

JOSEPH F. MASELLI  
Area Counsel  
(Heavy Manufacturing and  
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By: \_\_\_\_\_  
RICHARD S. BLOOM  
Associate Area Counsel  
(Large and Mid-Size Business)